Hazardous Materials Information Review Commission
Conseil de contrôle des renseignements relatifs aux matières dangereuses

Hazardous Materials Information Review Commission

2009-2010

Departmental Performance Report

The Honourable Leona Aglukkaq
Minister of Health
Government of Canada

Canada

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President's Message

I am pleased to submit to Parliament and to Canadians the Hazardous Materials Information Review Commission's Departmental Performance Report for 2009-2010. This report provides information on the Commission's activities and results of these activities over the past fiscal year. It also provides an account of discussions on the renewed strategic directions of this agency. The Commission is committed to an integrated results-focussed management approach, ensuring value for money in the work it does to protect trade secrets and to providing Canadian workers with complete and accurate health and safety information.

This report marks the end of the second year of the three-year Backlog Elimination Plan. The backlog of claims to be processed has now been reduced by 76% and is on target for elimination in 2010-2011 as planned. This accomplishment will significantly relieve the claim workload so that it will be possible to review claims and associated Material Safety Data Sheets (MSDSs) in a shorter period.

The Commission continued to give priority to high hazard claims in order to ensure related health and safety information is made available to the Canadian workers as fast as possible. Other efficiencies are being realized through the expanding use of internal electronic systems and a revision of the screening manual.

The Commission has participated in ongoing discussions on a number of important issues. One of these is the future implementation of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) in Canada. The eventual integration of this standard into the Workplace Hazardous Materials Information System (WHMIS) will have direct implications for the Commission's work on labels and MSDSs. Other issues include the re-examination of WHMIS excluded products and possible amendments to the *Hazardous Products Act*.

In the summer of 2009, discussions with staff and stakeholders were initiated to identify and assess the views, perceptions and influences impacting the Commission. The analysis validated the Commission's important role in fulfilling its mandate within WHMIS, but also underlined the importance of positioning the Commission to emphasize the contribution of its scientific and regulatory knowledge and experience to the improvement of hazard communication. These consultations lead to the development of three strategic directions to guide the Commission's work over the next two years. Endorsed by the Commission's Council of Governors in October 2009, they include:

1) enhance the quality and responsiveness of HMIRC services in order to emphasize proactive compliance with claimants' obligations;

2) improve the organization, translation and dissemination of HMIRC's knowledge so as to better exploit and share its unique expertise on improving hazard classification and communications; and
3) increase partnership participation in order to work with others to better address hazard communication challenges.

An integrated plan comprised of both a strategic and operational component, an evaluation framework, as well as the related logic model, have followed. This planning process has initiated a shift in organizational thinking that is, in my view, imperative – focussing on results for Canadians. It has been dynamic, inclusive, interactive and resource intensive. I am convinced the renewed direction will leverage the Commission's knowledge and expertise in hazard communication to the increased benefit of all stakeholders.

I am indebted to Commission staff for their diligence and dedication in carrying out our mandate. It is this synergy of professionalism and innovation that can be credited in large part for our reputation as a centre of expertise on hazard communication and for responsible management. I am also appreciative of the support and direction of the Council of Governors who, particularly over this past year, have helped to carve a renewed course for our future.

Sharon A. Watts
President and CEO

Section I : Summary Information

Raison d'être

The Hazardous Materials Information Review Commission (HMIRC) is an independent, quasi-judicial organization that provides a single mechanism under federal, provincial and territorial legislation to protect the trade secrets of companies that supply or use hazardous materials, and ensures that Canadian workers who handle such materials have all the information they need to do so safely.

Mandate

The *Hazardous Materials Information Review Act* (HMIRA) mandates the Commission to:

- Register claims for trade secret exemptions
- Issue decisions on the validity of claims for exemption on the basis of prescribed regulatory criteria
- Make decisions on the compliance of MSDSs and labels with WHMIS requirements
- Convene independent boards to hear appeals from claimants or affected parties

Responsibilities

The Commission enables companies to protect their trade secrets and, at the same time, ensures that MSDSs for products with trade secrets used by workers in Canada disclose complete and accurate information to reduce workplace-related illness and injury. The Commission's activities are key components of WHMIS, which was created in 1987 through a consensus of labour, industry and government. The success of WHMIS depends on cooperation among all these partners. All three groups play an integral part in ensuring that chemical products are used as safely as possible in Canadian workplaces.

WHMIS requires that suppliers provide employers with information on the hazards of materials sold for use in Canadian workplaces. The employers, in turn, provide that information to workers through product labels, worker education programs, and MSDSs. A product's MSDS must fully disclose all hazardous ingredients in the product, its toxicological properties, the safety precautions workers need to take when using the product, treatment required in the case of exposure and other pertinent information.

When a supplier introduces a product and wants to protect the identity or concentration of one or more of the hazardous ingredients, the company needs to apply to HMIRC for an exemption from the requirement to list all hazardous ingredients on the product's MSDS. When a claimant completes the application process, HMIRC registers the claim and the

product can be made available in the marketplace without disclosing the confidential business information. The Commission then evaluates the claim and issues a decision on its validity and, to protect workers, verifies the compliance of the MSDS with the *Hazardous Products Act* and *Controlled Products Regulations.*

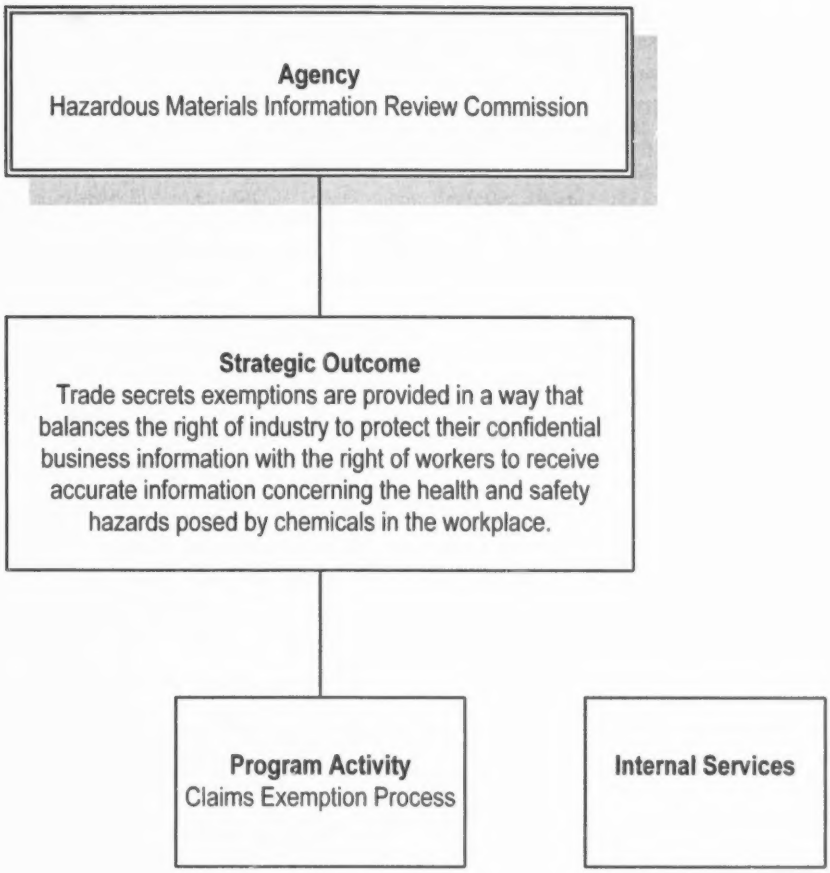
When an employer purchases a product and wants to protect the identity and/or concentration of any hazardous ingredients, or the name and the supplier of the product, the company also needs to apply to HMIRC for an exemption. In this case the Commission evaluates the MSDS and if necessary, the label, against the requirements of either the *Canada Labour Code*, for federally regulated employers, or the relevant provincial or territorial occupational health and safety regulations.

Where areas of non-compliance are identified, the Commission offers claimants the opportunity to make corrections through voluntary compliance undertakings. If the claimant chooses not to accept the undertaking the Commission issues formal orders obligating the claimant to make the changes.

A claimant or an affected party may appeal a decision or order with which they disagree. An affected party may also appeal an undertaking. Independent boards are then convened to hear the appeals.

In addition, HMIRC responds to requests from federal, provincial or territorial government health and safety officials for information about claims for exemption to help these officials administer and enforce their WHMIS obligations.

Strategic Outcome and Program Activity Architecture (PAA)[1]


Agency
Hazardous Materials Information Review Commission
Strategic Outcome
Trade secrets exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.
Program Activity
Claims Exemption Process
Internal Services

[1] The Commission has submitted proposed changes to its PAA to Treasury Board for approval. These changes support the renewed strategic directions.

Summary of Performance

2009-10 Financial Resources ($ thousands)

Planned Spending	Total Authorities	Actual Spending
5,555	5,986	5,845

2009-10 Human Resources (Full-time equivalents)

Planned	Actual	Difference
54	49	5

Strategic Outcome: Trade secret exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.		
Performance Indicators	**Targets**	**2009-10 Performance**
Number of appeals as a percentage of total claims processed	Zero	Zero

($ thousands)

Program Activity	2008-09 Actual Spending	2009-10				Alignment to Government of Canada Outcomes
		Main Estimates	Planned Spending	Total Authorities	Actual Spending	
Claims Exemption Process	4,921	5,555	5,555	5,986	5,845	**Healthy Canadians**
Internal Services[2]	0	0	0	0	0	
Total	4,921	5,555	5,555	5,986	5,845	

[2] Commencing in the 2009–2010 Estimates cycle, the resources for the Internal Services program activity are displayed separately from other program activities; they are no longer distributed among the remaining program activities, as was the case in previous Main Estimates. This has affected the comparability of spending and FTE information by program activity between fiscal years.

HMIRC, however, did not include Internal Services in its initial ARLU for 2009-2010 and therefore it was not part of either the Main estimates or the RPP for 2009-2010. Consequently, there is no data to report on for Internal Services for 2009-2010. Internal Services has been included in the RPP and Main estimates for HMIRC for 2010-2011 and on.

Contribution of Priorities to Strategic Outcome

The 2009-2010 Report on Plans and Priorities identified the following priorities for the Hazardous Materials Information Review Commission:

- Priority 1 - Efficient client service delivery
- Priority 2 - Modernized legislation
- Priority 3 – Stakeholder Liaison and Partnerships
- Priority 4 - Management Excellence

Strategic Outcome: Trade secret exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.		
Program Activity: Claims Exemption Process		
Expected Results: o Claimants are able to sell their products without disclosing confidential business information within an appropriate amount of time o Workers are provided with corrected health and safety information within an appropriate amount of time o Disputes are resolved prior to appeal		
Operational Priorities	**Status**	**Linkage to Strategic Outcome**
Priority 1: Efficient client service delivery **Type:** Ongoing	**Met All** The Commission successfully completed the second year of the three-year Backlog Elimination Plan. At the end of 2009-2010, the number of backlog claims was significantly reduced to 120 claims, to be completed as planned by the end of 2010-2011. The Commission implemented an integrated data management system in 2009-2010. This system is now operational and allows authorized staff to access consolidated and digitized information holdings relevant to the review of MSDSs at their desktop. Other tools which have been under development include: a revised electronic claim for exemption form, a multimedia educational tool on the claims process for the Commission's website, and an	Efficient client service delivery puts products with trade secret ingredients on the market more quickly, and reduces the amount of time it takes for workers to receive corrected health and safety information that they need to handle hazardous materials safely.

	updated manual for screening officers. The Commission has fully implemented the process changes and streamlining measures as a result of amendments to the *Hazardous Materials Information Review Act* its and Regulations.	
Priority 2: Modernized legislation **Type:** Ongoing	**Met All** The Commission continued to monitor and participate in domestic and international discussions on changes to legislation and standards relevant to its mandate, although there was little development in this area. Legislation and standards relevant to chemical trade secret protection and workplace health and safety information include: Canada's implementation of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS), the re-examination of WHMIS excluded products, and possible amendments to the *Hazardous Products Act* as a consequence of the proposed Food and Consumer Safety Action Plan.	The implementation of the GHS would both reduce barriers to trade and improve the consistency of hazard communication to workers internationally.
Priority 3: Stakeholder Liaison and Partnerships **Type:** Ongoing	**Mostly Met** Employees promoted the mandate and work of the Commission whenever possible at conferences and learning events. Discussions were held with organizations with related mandates, including our portfolio partners in Health Canada (HC), and more specifically the Healthy Environments and Consumer Safety Branch (HECSB). Partnerships to share best practices and explore collaborations will be pursued in the future. Increased emphasis on the integrated planning exercise was used to develop and implement innovative and user-friendly changes to the Commission website to enhance claimant and stakeholder communications and outreach, but progress on implementing these IT tools has met human resource challenges.	The groundwork being laid by the Commission with respect to engagement with stakeholders and partnerships will leverage the expertise at the Commission and similar organizations, resulting in improved approaches to hazard communication.

Management Priority	Status	Linkage to Strategic Outcome
Priority 4: Management Excellence **Type:** Ongoing	**Somewhat Met** As planned, the Commission has addressed the challenge of recruitment and retention of qualified personnel through the use of pre-qualified pools within the Health Portfolio and developmental opportunities/assignments. The areas flagged for improvement in the MAF V assessment have been analyzed and incorporated into the new Integrated Plan, including risk management and evaluation frameworks. Actual implementation will start in 2010-2011. The Commission has taken on a renewed approach to management of information in 2009-2010. There have been human resource and technical challenges which are expected to be overcome in the next fiscal year.	The Commission's initiatives to improve the management of financial, human and technological resources will better focus the Commission efforts on its strategic objectives and derive even better value for money.

Risk Analysis

Operational Context

Labour, industry and government agree on the importance of preventing illnesses and injuries caused by exposure to hazardous materials in Canadian workplaces. In order to help achieve this goal, WHMIS was created through the adoption of legislation and the development of procedures in the late 1980s. WHMIS requires suppliers (manufacturers, importers and distributors), as well as employers, to provide health and safety information about the chemicals produced or used in Canadian workplaces. As part of the WHMIS initiative, the *Hazardous Materials Information Review Act* and its regulations were adopted. HMIRA established the Hazardous Materials Information Review Commission, an independent agency with a quasi-judicial role. The Commission provides the mechanism in Canada to protect the confidential business information of chemical suppliers and employers and to ensure accurate and complete health and safety information is available to workers.

Risks and Opportunities

The Commission's ability to meet its performance target for claim processing continues to be hampered by a backlog of claims. This backlog was the result of an increase in the number and complexity of claims over the years. Fortunately, extra resources were made available to implement a three-year elimination plan. At the end of 2009-2010, the second year of the plan, the planned reduction is on target and it is anticipated that the backlog will be completely eliminated in the next year. In order to avoid a similar situation in the future, the Commission has developed tools to assist claimants to be proactively compliant and to streamline the claims exemption process.

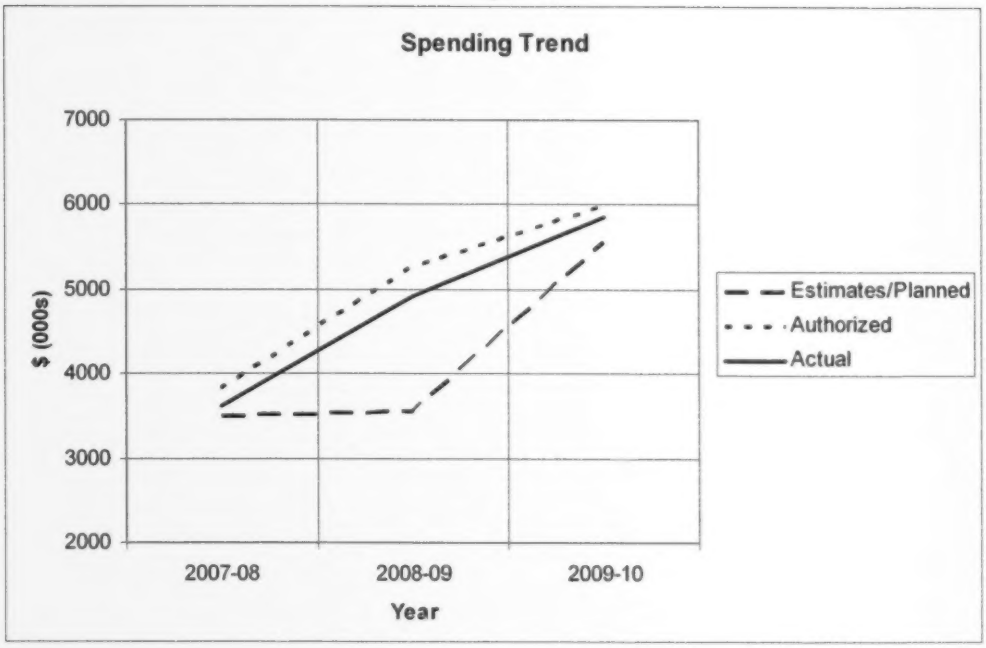
The future implementation of GHS in Canada will have implications for the claim exemption process, especially the review of associated MSDSs and labels. The Commission will continue to monitor and participate in discussions whenever appropriate.

The area of human resources is challenged by several factors, some of which are beyond the Commission's control. First, there has been difficulty staffing certain positions in biological sciences with a specialization in toxicology, a group identified by Health Canada as a shortage group. When possible, however, the Commission has taken advantage of pre-qualified pools and has participated in collective staffing processes in the Health Portfolio. There has been a reliance on temporary help agencies to fill some positions currently supported through sunset funding to eliminate the backlog. Second, as a small agency the Commission can offer only limited opportunity for career development and this, in turn, affects recruitment and retention; although developmental opportunities/assignments have been pursued when available. Third, eligibility for retirement at HMIRC is currently 23.3% and, like the rest of the Public Service, a source of concern for the future.

The Commission invested much time and effort in the development of an integrated plan over the last year. This initiative is based on renewed strategic directions which were endorsed by the Commission's Council of Governors in October 2009 and on which Commission managers and staff were subsequently consulted, and collaborated. The 2010-12 HMIRC Integrated Plan includes strategic, operational and evaluation components, and links Commission activities, outputs, and outcomes to benefits for Canadians. Development of an evaluation framework will be an important tool for measuring HMIRC's performance. The advantages of aligning strategic and operational plans are obvious and this will require a sustained commitment and effort on the part of all involved in order to become a reality.

Expenditure Profile

Graph 1



Graph 2

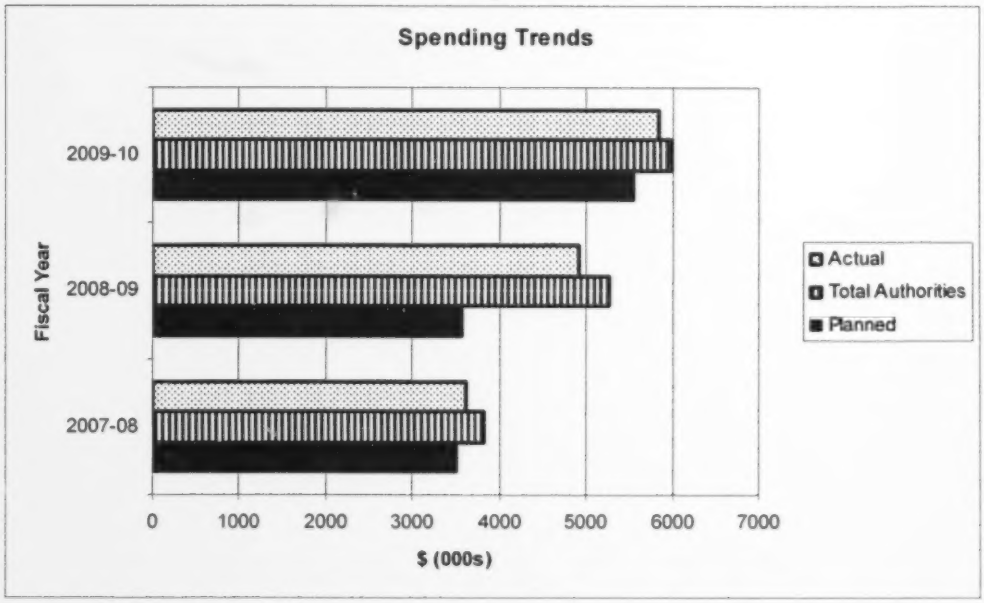


Table 1
Voted and Statutory Items
($ thousands)

Vote # or Statutory Item (S)	Truncated Vote or Statutory Wording	2007-08 Actual Spending	2008-09 Actual Spending	2009-10 Main Estimates	2009-10 Actual Spending
30	Operating expenditures	3,231	4,452	4,855	5,233[3]
(S)	Contributions to employee benefit plans	390	469	700	611
(S)	Spending of proceeds from the disposal of surplus Crown assets	-	-	-	1
	Total	3,621	4,921	5,555	5,845

In 2007-2008, HMIRC developed a plan to eliminate its backlog of claims for exemption over a three year period (2008-2011) and to prevent it from recurring. However, due to its very small A-Base, which in fiscal year 2007-2008 totaled $3.5 M, the Commission sought supplementary funding for each of the three years, as well as ongoing funding, for 2011-2012 and beyond, to ensure operational capacity and support functions.

In January 2008, HC and HMIRC, in consultation with the Treasury Board Secretariat, and with concurrence of the Minister of Health, agreed that HC would transfer $1.7 M to HMIRC to begin the work required to address the backlog through the 2008-2009 Supplementary Estimates A. The Annual Reference Level Update was identified as the appropriate mechanism for transferring supplementary funding of $2 M each year for 2009-2010 and 2010-2011, as well as $850K for 2011-2012 and ongoing.

The Commission's spending trend in 2009-2010 illustrated in Graphs 1 & 2 on the previous page and in Table 1 above reflects this supplementary funding and the resulting increase in spending.

[3] The difference between Main Estimates and Actual Spending is a result of Operational Budget Carry Forward from fiscal year 2008-2009 and in year funding for newly ratified collective bargaining agreements.

Section II : Analysis of Program Activity by Strategic Outcome

Strategic Outcome

Trade secret exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.

Program Activity by Strategic Outcome

Program Activity: Claims Exemption Process					
2009-10 Financial Resources ($ thousands)			2009-10 Human Resources (FTEs)		
Planned Spending	Total Authorities	Actual Spending	Planned	Actual	Difference
5,555	5,986	5,845	54	49	5

Expected Results	Performance Indicators	Targets	Performance Status	Performance Summary
Claimants are able to sell their products without disclosing confidential business information within an appropriate amount of time	Percentage of claims registered within 7 days	100%	Met all	100%

Expected Results	Performance Indicators	Targets	Performance Status	Performance Summary
Workers are provided with corrected health and safety information within an appropriate amount of time	Percentage of claims for which the elapsed time between the registration of the claim and the issuance of the decision and order in within the target period	90% within 365 days	Not met	42% [4]
Disputes are resolved prior to appeal	Percentage of disputes resolved prior to appeal	100%	Met all	100%

Benefits for Canadians

Canada's public health system exists to safeguard and improve the health of Canadians. The responsibility for public health is spread across the federal, provincial and territorial governments. Occupational health and safety programs, including WHMIS, are an essential part of the Canadian public health system. As part of WHMIS, the Commission provides the trade secret exemption mechanism on behalf of the federal, provincial and territorial governments, including the related occupational health and safety aspects in order to protect Canadian workers. It does this by assessing and addressing the hazards of chemicals used in the workplace, by innovation in translating its knowledge of hazard classification and communication, by ensuring compliance with public standards across jurisdictions, and by fostering mutual support and cooperation among key stakeholders. Through these activities HMIRC enhances public health and safety and the autonomy of citizens to make informed health and safety choices, which contributes to the achievement of the Government of Canada strategic outcome of "Healthy Canadians". The Commission's work also supports the Government of Canada's strategic outcome of a "Fair and Secure Marketplace" by promoting intellectual property rights, and economic growth and prosperity. This outcome ensures the marketplace continues to foster competitive conditions in order to attract investment, encourage innovation, and protect the public interest. The Commission enhances competitiveness by protecting trade secrets in the chemical industry.

[4] 42% is due to a backlog of claims that is on target to be eliminated by 31 March 2011.

Performance Analysis

The Commission's Program Activity, the Claim Exemption Process, surpassed the targeted reduction in backlog claims. The backlog was reduced by 137 to a remainder of 120 claims and represents an accumulated reduction of 76.6% to date (See Table 2 and Figure 1). Eliminating the backlog will significantly reduce the time between registering a claim and issuing a decision, providing workers access to corrected health and safety information faster.

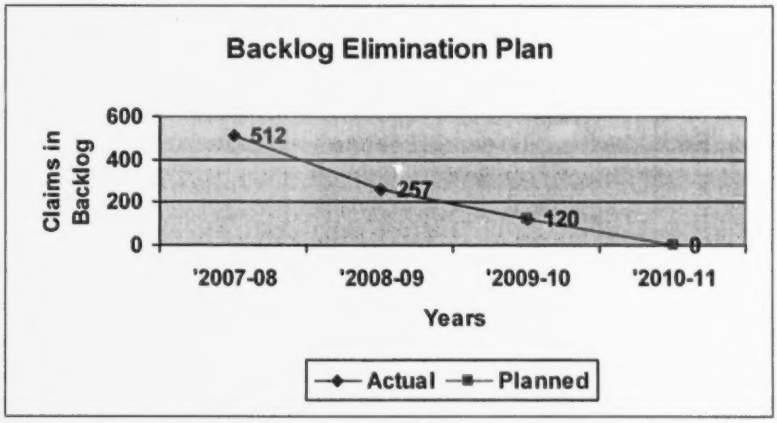
In 2009-2010 the program repeated last year's success in registering 100% of claims within 7 days. In addition, the Commission's review of claim validity and MSDS compliance showed increased efficiency with 42% of reviews completed within 365 days. With the elimination of the backlog of claims in 2010-2011, the Commission anticipates significant future efficiencies in this area.

Over time the Program Activity will gradually reflect the benefits of several initiatives that have been or are in the process of being implemented. A case in point is the new streamlined claim process based on amendments to HMIRC legislation for which the first claims to make it through the entire process are just now reaching completion. Other initiatives that will contribute to improved results include electronic tools and the revised screening manual.

Table 2

Backlog Elimination – Year 2 of 3	
Backlog of Claims at March 31, 2008	**512**
Backlog of Claims at March 31, 2010	**120**
Backlog Reduction (%)	**392 (76.6%)**

Figure 1



The Commission processes claims on a priority basis, using criteria such as the nature of the hazard present. This supports the goal of delivering important, necessary health and safety information to Canadian workers as fast as possible while protecting the chemical industry's confidential business information. In 2009-2010, high-priority claims represented 51% of total claims processed. A review of identified MSDS violations indicates the type and percentage of errors that were identified and subsequently corrected in order to reach the workplace without delay (See Table 3). Corrections made to accurately reflect hazard information on an MSDS can have significant correlation and application to other MSDSs prepared by the same claimant; the Commission would like to more actively promote this use of its scientific expertise in the future.

Table 3 - Number and Percentage of MSDS Violations corrected in 2009-2010

Violations Category	Number of Violations in 2009-2010	Percentage
Toxicological Properties	274	25.3
Hazardous Ingredients	254	23.4
Headings/Format, etc.	160	14.8
First Aid Measures	148	13.6
Physical Data	63	5.8
Fire or Explosion Hazard	46	4.2
Hazard Classification	42	3.9
Preparation Information	38	3.5
Reactivity Data	29	2.7
Product Information	22	2.0
Preventive Measures	9	0.8
Total	**1085**	**100**
Number of claims	**257**	
Average number of violations per claim	**4.2**	

Lessons Learned

During 2009-2010 the Commission has been intensely engaged in the development of an integrated plan to align strategic and operational plans. This plan reflects the three renewed strategic directions defined and endorsed by the Commission's Council of Governors in October 2009 that emphasize 1) proactive compliance, 2) knowledge translation and dissemination, and 3) strategic partnerships. One of the intentions of these strategic directions is to exploit HMIRC's unique knowledge and expertise regarding hazard communications through outreach and partnerships.

Other key organizational tools under development in conjunction with the integrated plan are: 1) a Logic Model, a chart displaying the horizontal and vertical relationships between Commission activities, strategies and target group, and 2) an Evaluation Framework, which will respond to a key recommendation in the last Treasury Board

MAF assessment. An HR Strategy has already been developed to address key staffing issues such as recruitment, retention and training especially in the context of a small agency with limited resources and opportunities for career development, as well as the significant number of staff who are eligible for retirement. Consideration will be given to identifying key positions and succession planning, as well as training, mentoring, coaching and job rotation to ensure continuity in leadership, management and day-to-day operations.

A number of electronic initiatives have been undertaken to facilitate claim registration and review. This is a move towards the use of digitized resources whenever possible which, in turn, will contribute to more efficient service delivery. It also supports the goal of increased proactive compliance on the part of claimants who will have more tools available to them on the Commission's website.

Section III : Supplementary Information

Financial Highlights

($ thousands)

Condensed Statement of Financial Position At End of Year (March 31, 2010)	**% Change**	**2008-09**	**2009-10**
ASSETS			
Total Assets	-32.3%	734,773[5]	497,624[6]
LIABILITIES			
Total Liabilities	-1.6%	1,501,958	1,364,025
EQUITY			
Total Equity	-27.8%	(767,185)	(866,401)
TOTAL	-32.3%	734,773	497,624

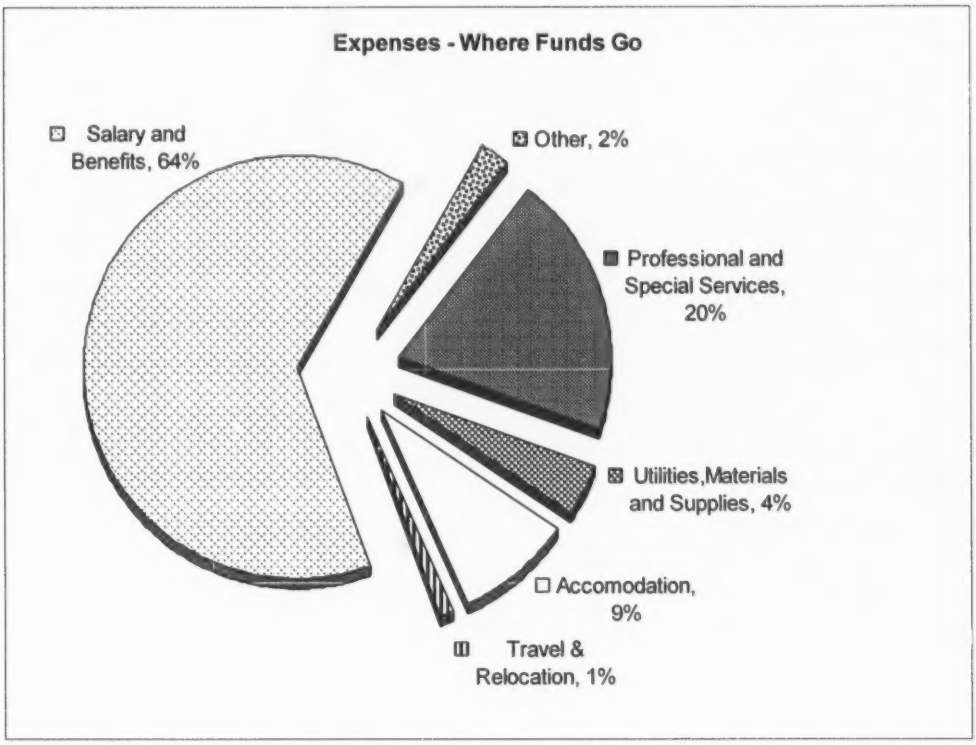
($ thousands)

Condensed Statement of Operations At End of Year (March 31, 2010)	**% Change**	**2008-09**	**2009-10**
EXPENSES			
Total Expenses		5,826,696	6,721,811
REVENUES			
Total Revenues		578,393	363,287
NET COST OF OPERATIONS		5,248,303	6,358,524

[5] During the year, HMIRC adopted the revised Treasury Board Accounting Standard TBAS 1.2 : Departmental and Agency Financial Statements which is effective for the Commission for the 2010-2011 fiscal year. The major change in the accounting policies of the Commission required by the adoption of the revised TBAS 1.2 is the recording of amounts due from the Consolidated Revenue Fund as an asset on the Statement of Financial Position. The adoption of the new Treasury Board accounting policies has been accounted for retroactively.

[6] Assets are comprised mainly of accounts receivable for accrued salary recoveries for staff on loan to other departments and the fiscal year 2009-2010 Operational Budget Carry Forward due to HMIRC from the Consolidated Revenue Fund.

Financial Highlights Chart



Financial Statements

This document can be found in the following link: www.hmirc.gc.ca/publications/dpr-rmr/fs-ef-0910-eng.shtml

List of Supplementary Information Tables

All electronic supplementary information tables found in the 2009-2010 Departmental Performance Report can be found on the Treasury Board of Canada Secretariat's website at: http://www.tbs-sct.gc.ca/dpr-rmr/2009-2010/index-eng.asp.

Table 1: Sources of Respendable and Non-Respendable Revenue
Table 2: User Fees/External Fees

Other Items of Interest

Mail:	Hazardous Materials Information Review Commission 427 Laurier Avenue West, 7th floor Ottawa, Ontario K1A 1M3
Telephone:	613.993.4331
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E-mail:	**hmirc-ccrmd@hc-sc.gc.ca**

Operating Structure and Council of Governors

http://www.hmirc-ccrmd.gc.ca/about-apropos/index-eng.shtml#operating